

JAN 25 1991

Regional Technical Coordinator
Southwest Region

Assistant Chief Counsel (Income Tax & Accounting)
CC:IT&A TCR 17,821 -- TR-45-1271-90

Technical Coordination Report Submitted by:
Greg Loendorf
Denver District

Recommending: Revocation of Rev. Proc. 85-26
or deferral of one year after a CEP
taxpayer filed the return to show
additional tax and/or provide adequate
disclosure.

Mr. Loendorf notes that section 6661 imposes a substantial understatement penalty in certain circumstances; that the related regulations provide an automatic waiver of the penalty if the taxpayer files an amended return showing additional tax and/or adequate disclosure before being notified by the Service of an impending audit, and that Rev. Proc. 85-26 makes an exception for CEP taxpayers that allows them to file an amended return after the first contact by the Service commencing an examination. This is based on the premise that all returns of CEP taxpayers are examined. However, in the Denver District the opposite is true.

Although section 6661 of the Code has been repealed, new section 6662 imposes a penalty for any substantial understatement of income tax.

Because Rev. Proc. 85-26 is still relevant, there is a revenue procedure project to up-date Rev. Proc. 85-26, and Mr. Loendorf's recommendation is being considered in that connection.

We appreciate the interest Mr. Loendorf has taken in this matter and hope that he will continue to submit his ideas. Copies of this memorandum are attached for the District Technical Coordinator, Mr. Loendorf, and other interested parties.

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Mr. Stuart Spielman is the attorney assigned to up-date Rev. Proc. 85-26. He will advise your office and Mr. Loendorf when the project is completed. If you wish to contact him, his FTS number is 566-3980.

Assistant Chief Counsel (Income Tax &
Accounting)

(Signed) Norlyn D. Miller, Jr.

By _____
Norlyn D. Miller, Jr.
Senior Technician Reviewer, Branch 4

cc: Mr. Stuart Spielman
Room 5144